

AMENDED IN ASSEMBLY MAY 24, 2010

AMENDED IN ASSEMBLY JUNE 25, 2009

AMENDED IN SENATE MAY 13, 2009

AMENDED IN SENATE MARCH 31, 2009

## SENATE BILL

**No. 782**

**Introduced by Senator Yee**

**(Coauthor: Senator Florez)**

~~(Coauthor: Assembly Member Huffman)~~

*(Coauthors: Assembly Members Blumenfeld, Davis, Huffman, Saldana,  
Smyth, Swanson, and Torrico)*

February 27, 2009

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An act to add Sections 1941.5 and 1941.6 to the Civil Code, and to add Section 1161.3 to the Code of Civil Procedure, relating to unlawful detainer.

### LEGISLATIVE COUNSEL'S DIGEST

SB 782, as amended, Yee. Residential tenancies: domestic violence.

Existing law governs the hiring of real property based on the terms of the agreement, or on the behavior of the parties. Under existing law, a tenant may notify the landlord in writing that he or she, or a household member, was a victim of an act of domestic violence, sexual assault, or stalking, and intends to terminate the tenancy. The tenant is released from any rent payment obligation 30 days following the giving of the notice, or as specified.

Existing law establishes the criteria for determining when a tenant is guilty of unlawful detainer of a premises, and includes committing nuisance in this regard. Existing law provides, until January 1, 2012, for the purposes of the law of unlawful detainer, that if a person commits

any specified act or acts of domestic violence, sexual assault, or stalking against another tenant or subtenant on the premises, there is a rebuttable presumption affecting the burden of proof that the person has committed a nuisance on the premises if the victim or a member of the victim's household has not vacated the premises.

~~This bill would create a defense to an action for possession under the unlawful detainer provisions described above, except as specified, if the court determines that (1) the tenant or the tenant's household member is a victim of an act or acts that constitute domestic violence, sexual assault, or stalking, and (2) the notice to quit is substantially based upon the act or acts against the tenant or a tenant's household member that constitute domestic violence, sexual assault, or stalking, including, but not limited to, an action for possession based on complaints of noise, disturbances, or repeated presence of police. The bill would prohibit the eviction of any members of the tenant's household from being evicted under the above circumstances, except that the bill would require the member of the household who committed the act or acts of domestic violence, sexual assault, or stalking, to be evicted.~~

*This bill would prohibit a landlord from terminating a tenancy or failing to renew a tenancy based upon an act of domestic violence, sexual assault, or stalking against a tenant or a tenant's household member when that act is documented, as specified, and the perpetrator of that act is not a tenant of the same dwelling unit.*

~~The bill would also authorize a tenant, who is a victim of, or whose member of his or her household is a victim of, an act or acts that constitute tenant who is protected by a specified type of restraining order related to acts including domestic violence, sexual assault, or stalking, to immediately change the locks on his or her dwelling unit without the landlord's permission or to make a written request that the landlord seek a partial eviction ordering the removal of another tenant who has committed the act or acts change the locks of the dwelling unit, as specified. The bill would require the court to terminate the tenancy of the tenant who committed the act or acts of domestic violence, sexual assault, or stalking, if the landlord chooses to seek a partial eviction of that tenant landlord to change the locks within 48 hours of that request, as specified, when the restrained person is not a tenant of the same dwelling unit. The bill would prohibit the court from evicting the victim or the remainder of the tenants, as specified. The bill would require a landlord to retain in strictest confidence all information regarding any act or acts of domestic violence, sexual assault, or stalking that is~~

~~received in confidence from a tenant or a tenant's household member who is a victim, except as specified.~~

*The bill would also authorize the landlord to change the locks when the restrained person is a tenant of the same dwelling unit. The bill would declare the landlord not liable to a restrained person who is excluded from the dwelling unit if the landlord complies completely and in good faith with that provision. The bill would state that a restrained person who has been excluded from a dwelling unit under that provision remains liable under the lease with all other tenants of the dwelling unit for rent as provided in the lease.*

*The bill would authorize a protected tenant to change the locks without the landlord's permission, notwithstanding any provision in the lease to the contrary, if the landlord does not change the locks within 48 hours, as specified, with regard to leases executed on or after the date the bill would take effect.*

Vote: majority. Appropriation: no. Fiscal committee: no.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

- 1 SECTION 1. The Legislature finds and declares all of the
- 2 following:
- 3 (a) Domestic violence is a widespread problem impacting one
- 4 in three households in the United States in all communities.
- 5 (b) Safe housing for domestic violence victims is essential for
- 6 safe recovery.
- 7 (c) Countless studies demonstrate that stable, safe housing is a
- 8 public safety issue, a critical element of ensuring the safety of
- 9 domestic violence and stalking victims.
- 10 (d) Landlords may evict domestic violence and stalking victims
- 11 based upon complaints of noise, fighting, or repeated visits from
- 12 the police to a victim's residence, even though they are results of
- 13 crimes committed against the victim.
- 14 (e) Domestic violence and stalking victims should not lose their
- 15 housing because they are being abused and should not be forced
- 16 to leave their homes in order to report abuse.
- 17 (f) The United States government and many states, cities, and
- 18 counties already have enacted comprehensive tenants' rights
- 19 protections for victims of domestic violence and stalking.

1 (g) *An increasing number of courts have found that evictions*  
2 *of tenants based on acts of domestic violence, sexual assault, and*  
3 *stalking committed against them violate federal and state fair*  
4 *housing laws.*

5 (h) *It is critical for rental property owners to develop policies*  
6 *and procedures that balance the needs of tenants' peaceful*  
7 *enjoyment of the property while considering the safety and fair*  
8 *housing rights of victims of domestic violence, sexual assault, and*  
9 *stalking.*

10 SEC. 2. *Section 1941.5 is added to the Civil Code, to read:*

11 1941.5. (a) *This section shall apply if the person who is*  
12 *restrained from contact with the tenant referred to in subdivision*  
13 *(b) under an order lawfully issued pursuant to Section 527.6 of*  
14 *the Code of Civil Procedure, Part 3 (commencing with Section*  
15 *6240), Part 4 (commencing with Section 6300), or Part 5*  
16 *(commencing with Section 6400) of Division 10 of the Family*  
17 *Code, Section 136.2 of the Penal Code, or Section 213.5 of the*  
18 *Welfare and Institutions Code is not a tenant of the same dwelling*  
19 *unit as the tenant referred to in subdivision (b).*

20 (b) *A tenant may immediately change the locks of his or her*  
21 *dwelling unit without the landlord's permission, notwithstanding*  
22 *any provision in the lease to the contrary, if he or she has obtained*  
23 *a court order lawfully issued pursuant to Section 527.6 of the Code*  
24 *of Civil Procedure, Part 3 (commencing with Section 6240), Part*  
25 *4 (commencing with Section 6300), or Part 5 (commencing with*  
26 *Section 6400) of Division 10 of the Family Code, Section 136.2 of*  
27 *the Penal Code, or Section 213.5 of the Welfare and Institutions*  
28 *Code. If the protected tenant changes the locks, the protected*  
29 *tenant shall notify the landlord within 48 hours that the locks have*  
30 *been changed, and shall provide the landlord with a key by any*  
31 *reasonable method agreed upon by the landlord and tenant.*

32 (c) *A landlord shall change the locks of a tenant's dwelling unit*  
33 *upon written request of the tenant not later than 48 hours after*  
34 *the tenant gives the landlord a copy of a court order lawfully issued*  
35 *pursuant to Section 527.6 of the Code of Civil Procedure, Part 3*  
36 *(commencing with Section 6240), Part 4 (commencing with Section*  
37 *6300), or Part 5 (commencing with Section 6400) of Division 10*  
38 *of the Family Code, Section 136.2 of the Penal Code, or Section*  
39 *213.5 of the Welfare and Institutions Code, and shall give the*  
40 *protected tenant a key to the new locks.*

1     (d) If a landlord fails to change the locks within 48 hours, the  
2     protected tenant may change the locks without the landlord's  
3     permission, notwithstanding any provision in the lease to the  
4     contrary. If the protected tenant changes the locks, the protected  
5     tenant shall notify the landlord within 48 hours that the locks have  
6     been changed, and shall provide the landlord with a key by any  
7     reasonable method agreed upon by the landlord and tenant. This  
8     subdivision shall apply to leases executed on or after the date the  
9     act that added this section takes effect.

10    SEC. 3. Section 1941.6 is added to the Civil Code, to read:

11    1941.6. (a) This section applies if the person who is restrained  
12    from contact with the tenant referred to in subdivision (b) under  
13    an order lawfully issued pursuant to Section 527.6 of the Code of  
14    Civil Procedure, Part 3 (commencing with Section 6240), Part 4  
15    (commencing with Section 6300), or Part 5 (commencing with  
16    Section 6400) of Division 10 of the Family Code, Section 136.2 of  
17    the Penal Code, or Section 213.5 of the Welfare and Institutions  
18    Code is a tenant of the same dwelling unit as the tenant referred  
19    to in subdivision (b).

20    (b) A tenant may immediately change the locks of his or her  
21    dwelling unit without the landlord's permission, notwithstanding  
22    any provision in the lease to the contrary, if he or she has obtained  
23    a court order lawfully issued pursuant to Section 527.6 of the Code  
24    of Civil Procedure, Part 3 (commencing with Section 6240), Part  
25    4 (commencing with Section 6300), or Part 5 (commencing with  
26    Section 6400) of Division 10 of the Family Code, Section 136.2 of  
27    the Penal Code, or Section 213.5 of the Welfare and Institutions  
28    Code. If the protected tenant changes the locks, the protected  
29    tenant shall notify the landlord within 48 hours that the locks have  
30    been changed, and shall provide the landlord with a key by any  
31    reasonable method agreed upon by the landlord and tenant.

32    (c) A landlord may change the locks of a tenant's dwelling unit  
33    upon written request of the tenant after the tenant gives the  
34    landlord a copy of a court order lawfully issued pursuant to Section  
35    527.6 of the Code of Civil Procedure, Part 3 (commencing with  
36    Section 6240), Part 4 (commencing with Section 6300), or Part 5  
37    (commencing with Section 6400) of Division 10 of the Family  
38    Code, Section 136.2 of the Penal Code, or Section 213.5 of the  
39    Welfare and Institutions Code that excludes from the dwelling unit

1 *the restrained person referred to in subdivision (a). The landlord*  
2 *shall give the protected tenant a key to the new locks.*

3 *(d) If a landlord fails to change the locks within 48 hours, the*  
4 *protected tenant may change the locks without the landlord's*  
5 *permission, notwithstanding any provision in the lease to the*  
6 *contrary. If the protected tenant changes the locks, the protected*  
7 *tenant shall notify the landlord within 48 hours that the locks have*  
8 *been changed, and shall provide the landlord with a key by any*  
9 *reasonable method agreed upon by the landlord and tenant. This*  
10 *subdivision shall apply to leases executed on or after the date the*  
11 *act that added this section takes effect.*

12 *(e) Notwithstanding Section 789.3, if a landlord complies*  
13 *completely and in good faith with this section, the landlord is not*  
14 *liable to a person excluded from the dwelling unit pursuant to this*  
15 *section.*

16 *(f) A person who has been excluded from a dwelling unit under*  
17 *this section remains liable under the lease with all other tenants*  
18 *of the dwelling unit for rent as provided in the lease.*

19 *SEC. 4. Section 1161.3 is added to the Code of Civil Procedure,*  
20 *to read:*

21 *1161.3. A landlord shall not terminate a tenancy or fail to*  
22 *renew a tenancy based upon an act or acts against a tenant or a*  
23 *tenant's household member that constitute domestic violence as*  
24 *defined in Section 6211 of the Family Code, sexual assault as*  
25 *defined in Section 1219, or stalking as defined in Section 1708.7*  
26 *of the Civil Code or Section 646.9 of the Penal Code, if both of*  
27 *the following apply:*

28 *(a) The act or acts of domestic violence, sexual assault, or*  
29 *stalking have been documented by one of the following:*

30 *(1) A temporary restraining order or emergency protective*  
31 *order lawfully issued pursuant to Section 527.6, Part 3*  
32 *(commencing with Section 6240), Part 4 (commencing with Section*  
33 *6300), or Part 5 (commencing with Section 6400) of Division 10*  
34 *of the Family Code, Section 136.2 of the Penal Code, or Section*  
35 *213.5 of the Welfare and Institutions Code that protects the tenant*  
36 *or household member from domestic violence, sexual assault, or*  
37 *stalking.*

38 *(2) A copy of a written report by a peace officer, employed by*  
39 *a state or local law enforcement agency acting in his or her official*  
40 *capacity, stating that the tenant or household member has filed a*

1 *report alleging that he or she or the household member is a victim*  
2 *of domestic violence, sexual assault, or stalking.*

3 *(b) The perpetrator of the act or acts of domestic violence,*  
4 *sexual assault, or stalking is not a tenant of the same dwelling unit*  
5 *as the tenant or household member.*

6 SEC. 2.—Section 1161.3 is added to the Code of Civil Procedure,  
7 to read:

8 1161.3.—(a) If a landlord has issued a notice to quit, a tenant  
9 may request that the landlord seek a partial eviction ordering the  
10 removal of another tenant if all of the following are true:

11 (1) The tenant seeking the partial eviction or a member of his  
12 or her household is a victim of an act or acts that constitute  
13 domestic violence, sexual assault, or stalking.

14 (2) The notice to quit is substantially based upon the act or acts  
15 against the tenant seeking the partial eviction or a member of his  
16 or her household that constitute domestic violence, sexual assault,  
17 or stalking, including, but not limited to, a notice to quit based on  
18 complaints of noise, disturbances, or repeated presence of police.

19 (3) The tenant seeking the partial eviction provides the landlord  
20 with a written declaration, signed under penalty of perjury, setting  
21 forth the act or acts constituting domestic violence, sexual abuse,  
22 or stalking against himself or herself or a member of his or her  
23 household and identifies the other tenant who has committed the  
24 act or acts.

25 (4) The tenant seeking the partial eviction is not the tenant who  
26 committed the acts of domestic violence, sexual assault, or stalking.

27 (b) If the landlord chooses to seek a partial eviction of the tenant  
28 who committed the act or acts of domestic violence, sexual abuse,  
29 or stalking, and the court deems that paragraphs (1) and (2) of  
30 subdivision (a) are true, then the court shall terminate the tenancy  
31 of the tenant who committed the act or acts of domestic violence,  
32 sexual assault, or stalking, while allowing the tenancy of the  
33 remainder of the tenants to continue undisturbed.

34 (c) (1) If the landlord chooses not to seek a partial eviction as  
35 provided in subdivision (b) and instead brings an unlawful detainer  
36 action under paragraph (1) or (4) of Section 1161, a tenant may  
37 raise a defense alleging the following:

38 (A) The tenant or a member of the tenant's household is a victim  
39 of an act or acts that constitute domestic violence, sexual assault,  
40 or stalking.

~~(B) The notice to quit is substantially based upon the act or acts against the tenant or a tenant's household member that constitute domestic violence, sexual assault, or stalking, including, but not limited to, a notice to quit based on complaints of noise, disturbances, or repeated presence of police.~~

~~(2) If the court determines that both subparagraphs (A) and (B) of paragraph (1) are true, then the tenant, and the members of the tenant's household other than a member who committed the act or acts of domestic violence, sexual assault, or stalking, shall not be evicted based on acts substantially related to the domestic violence.~~

~~(3) If the court determines that both subparagraph (A) and (B) of paragraph (1) are true, then the tenant who committed the act or acts of domestic violence, sexual assault, or stalking, shall be evicted. The defense described in this subdivision is not available to the tenant that committed the act or acts of domestic violence, sexual abuse, or stalking.~~

~~(d) For the purposes of this section:~~

~~(1) "Household member" means a member of the tenant's family who lives in the same household as the tenant.~~

~~(2) "Victim of domestic violence, sexual assault, or stalking" means any person who has been, or is currently being, subjected to one or more of the following:~~

~~(A) Domestic violence, as defined in Section 6211 of the Family Code or Section 13700 of the Penal Code.~~

~~(B) Sexual assault, as defined in Section 261, 261.5, 262, 286, 288a, or 289 of the Penal Code.~~

~~(C) Stalking, as defined in Section 1708.7 of this code or Section 646.9 of the Penal Code.~~

~~(e) Nothing in this section shall be construed to affect the tenant's liability for delinquent rent or other sums owed to the landlord, or the landlord's remedies in recovering against the tenant for those sums.~~

~~(f) A landlord shall retain in strictest confidence all information regarding any act or acts of domestic violence, sexual assault, or stalking that is received in confidence from a tenant or a tenant's household member who is a victim, except to the extent that disclosure is necessary to provide for a reasonable accommodation for the victim, is otherwise required pursuant to federal, state, or local law, or is necessary to assist the court in making the~~



1 ~~determinations under this section. The victim may authorize limited~~  
2 ~~or general release of any information otherwise deemed~~  
3 ~~confidential under this subdivision. The release shall be in writing.~~

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